

**Pension Protection Act of 2006
Credit Counseling Provisions
Frequently Asked Questions
October 9, 2006**

1. Does the new law apply to my organization?

The new law applies to you if a substantial purpose of your organization is either to educate the general public on budgeting, personal finance, financial literacy, saving and spending practices, or to conduct financial counseling -- and you want to be tax-exempt under section 501(c)(3) or 501(c)(4).

[Note: If you provide credit counseling that is only incidental to achieving other exempt purposes, you may not be subject to the new law. For example, if you are a school and offer a financial literacy course as part of your curriculum, the new law does not apply to you.]

2. What does the new law require for credit counseling organizations exempt under Code section 501(c)(3) or 501(c)(4)?

In addition to [current legal requirements](#), an organization must meet the following new rules:

- Services – Must provide credit counseling services tailored to the specific needs and circumstances of the consumer;
- Loans – Cannot make loans to debtors;
- Credit Repair – Can only provide incidental services to improve consumer credit records and credit history, and cannot charge a separate fee for such services;
- Ability to Pay – Cannot refuse services based on ability to pay or ineligibility/unwillingness of consumer to enroll in a debt management plan (DMP);
- Fee Policy – Must charge reasonable fees and provide waivers if consumer is unable to pay;
- Board Composition – Majority of members must represent broad interests of the public; maximum of 49 percent can be employed by organization or benefit from it;
- Ownership – Cannot own more than 35 percent of an entity that is involved in the credit counseling or similar business;
- Referrals – Cannot pay for referrals or receive amounts for providing referrals for DMPs.

3. Are there other requirements for section 501(c)(3) organizations?

There are two additional requirements for a section 501(c)(3) organization:

- Contributions: Cannot solicit contributions from consumers during initial counseling process, or while consumer is receiving services from organization;

- **Revenue from Debt Management Plan (DMP) Services:** The amount of revenue an organization may receive from its customers' creditors which is attributable to DMP services is limited:
 - i. For new organizations, such revenue cannot exceed 50 percent of total revenues.
 - ii. For existing organizations, such revenue cannot exceed the following limits for those taxpayers on a calendar year accounting period.
 1. 80 percent -- effective January 1, 2008
 2. 70 percent -- effective January 1, 2009
 3. 60 percent -- effective January 1, 2010
 4. 50 percent -- effective January 1, 2011

[Note: For taxpayers on a fiscal year accounting period, the transitional rules apply to the first taxable year beginning one year after August 17, 2006.]

4. Our organization is already exempt under section 501(c)(4) but we never filed an application. What should we do?

You need to file an application for exemption under section 501(c)(4) ([Form 1024](#)), which you can get from the IRS Internet site.

5. Am I required to comply with the new law even if I do not offer debt management plans (DMPs)?

Yes. See [Question 1](#).

6. Are there restrictions on who may serve on the governing board of a credit counseling organization?

Yes. A majority of the board members (at least 51 percent) must represent the broad interests of the public. This includes public officials, community leaders, and persons having special knowledge or expertise in credit or financial education. No more than 49 percent of the board may be employees of the organization, creditors, or those who will benefit financially in any other way.

[Note: For example, a three-member board will fail to meet the requirement if two members are employed by the organization.]

7. Can we put our activities that don't meet the criteria of the new law into a wholly-owned taxable subsidiary?

No. You may not own more than 35 percent of a business that lends money; repairs credit; or provides DMP services, payment processing, or similar services.

[Note: Examples include a DMP processor, a debt-negotiation/debt-settlement service, and a pay-day or short term loan initiator.]

8. May I buy lists of potential customers from the Internet site that carries my ads?

No. You cannot purchase *leads* of customers from third party vendors and you cannot sell the names of your customers to other providers.

9. The statute says we cannot solicit contributions from consumers. How can we raise operating funds?

You cannot ask for voluntary contributions from consumers during the initial counseling process or while they are receiving services. However, you may charge reasonable fees for education, individual counseling sessions, or DMP services. You may also seek government or foundation grants and contributions from individuals who are not customers.

10. Does the statute limit how much we can receive from debt management plan (DMP) services?

You are [limited](#) in the amount that you receive from creditors participating in your program that is attributable to DMP services (for example, fair share payments). Amounts received from consumers for set-up and monthly fees are not included in this calculation, however.

11. When does the statute take effect?

The dates below apply to taxpayers on a calendar year accounting period:

For new organizations, the statute is effective January 1, 2007.

[Note: For taxpayers on a fiscal year accounting period, the new law applies to taxable years beginning after August 17, 2006.]

For existing organizations, the statute is effective January 1, 2008.

[Note: For those taxpayers on a fiscal year accounting period, the new law applies to taxable years beginning one year after August 17, 2006.]

12. If I don't meet the requirements of the new law, is my income from DMPs taxed?

Yes, your DMP services will be treated as unrelated trade or business.

[Note: For example, if you are a school that is exempt under section 501(c)(3) and offer an incidental amount of DMPs, income from those DMPs will be taxed]

13. Where can I get more information?

Access the IRS website at www.irs.gov/eo (the *Charities and Other Nonprofits* page). Click on [Abusive Transactions](#) on the left side of the page, then click through to [Credit Counseling Organizations](#).